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Minutes
Nexus Committee Meeting (Open Session)
July 31, 2017
Galt House, 140 North Fourth Street, Louisville, KY

List attendees:

First Name	Last Name	State or Affiliation
Tracee	Abel	Montana Department of Revenue
Tiffany	Adair	Kentucky Department of Revenue
Preston	Alderman	DC Office of Tax and Revenue
Steven	Alvarez	Georgia Department of Revenue
Walter	Anger	AR Dept. of Finance and Administration
Dan	Armer	New Mexico Taxation and Revenue
Tom	Atchley	AR Dept. of Finance and Administration
Lee	Baerlocher	Montana Department of Revenue
Tim	Bennett	Kentucky Department of Revenue
Michelle	Biermeier	Wisconsin Department of Revenue
Karolyn	Bishop	State of WA - Department of Revenue
Melanie	Bitzer	Kentucky Department of Revenue
Krystal	Bolton	Louisiana Department of Revenue
Patricia	Calore*	Michigan Department of Treasury
Joan	Cagle*	Tennessee Department of Revenue
Michael	Christensen	Utah State Tax Commission
Lennie	Collins	NC Department of Revenue
Anita	Conner	PA Department of Revenue
Richard	Cram	Multistate Tax Commission
Janice	Davidson	North Carolina Department of Revenue

First Name	Last Name	State or Affiliation
Richard	Dobson	Kentucky Department of Revenue
Latonia	Dooley	Kentucky Department of Revenue
Lee	Evans*	New Jersey Division of Taxation
Cathy	Felix	Multistate Tax Commission
Scott	Fryer	AR Dept. of Finance & Administration
Michael	Gamble	Alabama Department of Revenue
Keith	Getschel	Multistate Tax Commission
Mark	Godfrey	Missouri Department of Revenue
Frank	Hales	Utah State Tax Commission
Amy	Hamilton	Tax Analysts (State Tax Notes)
Denise	Harding*	New Jersey Division of Taxation
Ricky	Haven	Kentucky Department of Revenue
Kory	Hofland	Department of Revenue
Jessica	Honican	Kentucky Department of Revenue
Troy	Hopkins*	Nebraska Department of Revenue
Phil	Horwitz	Colorado Department of Revenue
Richard	Jackson	Idaho State Tax Commission
Harold	Jennings	Multistate Tax Commission
Rusty	Johnson*	Texas Comptroller of Public Accounts
Hal	Jones	State of Tennessee
Kristin	Kalmonty	Wisconsin Department of Revenue
Mary Ellen	Knack	Tennessee Attorney General's Office
Jayne	Kulberg	Wisconsin Department of Revenue
Todd	Lard	Eversheds Sutherland
Scott	Latourneau*	Nevada Corporate Planners, Inc.
Katie	Lolley	Oregon Department of Revenue
Clarence	Lymon	Louisiana Department of Revenue

First Name	Last Name	State or Affiliation
Kevin	Milligan*	Pennsylvania Department of Revenue
Deanna	Munds-Smith	AR Dept. of Finance and Administration
Marcia Ann	Oakman	Kentucky Department of Revenue
Barbara	O'Donnell*	Florida Department of Revenue
Scott	Peterson	Avalara
Matt	Peyerl	ND Office of State Tax Commissioner
Leah	Putnam	Oregon Dept. of Revenue
Rouen	Reynolds	Alabama Department of Revenue
Kevin	Richard	Louisiana Department of Revenue
Keith	Richardson	DC Office of Tax and Revenue
Kerrin	Rounds	NH Dept. of Revenue Administration
Melissa	Russell	Kentucky Department of Revenue
Jeffrey	Silver	Multistate Tax Commission
Diane	Simon-Queen*	Multistate Tax Commission
Melissa	Smith	Amazon
Michael	Smith	Delaware Department of Revenue
Scott	Spilinek*	Nebraska Department of Revenue
Shawn	Stacy	Kentucky Department of Revenue
Marshall	Stranburg	Multistate Tax Commission
Randy	Tilley	Idaho State Tax Commission
Audrey	Tyndall-Hoyle*	New Jersey Division of Taxation
Christy	Vandevender	Alabama Department of Revenue
Gene	Walborn	Montana Department of Revenue
Mary Linda	Wells	Kentucky Department of Revenue
Marjorie	Welch*	Oklahoma Tax Commission
Elliot	Werk	Idaho State Tax Commission
David	Wiest	South Dakota Department of Revenue

First Name	Last Name	State or Affiliation
Steve	Yang	Multistate Tax Commission
Maria	Zielinski	Hawaii Department of Taxation

*participation by telephone

Chairman Lennie Collins, North Carolina, brought the meeting to order, introductions of attendees were made, and public comment was invited. No public comment was made.

Randy Tilley, Idaho, moved for approval of the minutes of the March 9, 2017 open session meeting of the Nexus Committee, and the motion passed unanimously.

Richard Cram, Director of the National Nexus Program, presented the FY 2017 Nexus Program Director's Report and Update on Recent Nexus Law Developments since March 9, 2017.

Online Marketplace Seller Voluntary Disclosure Proposal

Richard Cram reviewed the report on the closed session meetings of April 18, May 16, June 20, and July 18, 2017 regarding the time-limited voluntary disclosure proposal for online marketplace sellers with inventory nexus (such as Amazon FBA sellers), identifying the issues that needed to be resolved concerning the proposal, including:

1. Identify States participating with no look-back period.
2. Identify States participating with limited look-back period.
3. Should the proposal include both income/franchise tax and sales/use tax or be limited to sales/use tax?
4. Can nonmember States participate?
5. Should there be a minimum sales volume or estimated back-tax liability requirement?
6. Should the application period be August 17 to October 17, 2017?
7. When should the seller/applicant be required to commence remitting and filing returns: December 1, 2017? January 1, 2018?
8. Which version of the confidentiality language in Paragraph 8 of the voluntary disclosure agreement should be used: Alternative 1 or Alternative 2?

Vice-Chair Christy Vandevender, Alabama, moved to proceed with discussion of a proposal by participating States for limited-time voluntary disclosure relief from back-tax liability and prospective compliance for online marketplace sellers. The motion was approved unanimously.

Lee Baerlocher, Montana, asked whether this was a proposal that all states would need to participate in, or none could. Randy Tilley, Idaho, pointed out that some states do not have Amazon fulfillment centers located in them, so they may have limited incentive to participate.

Phil Horwitz, Colorado, brought up the subject of a sales volume threshold and felt it was needed for sales/use tax. He pointed out that states may have different income tax nexus thresholds from sales/use tax nexus. Colorado has adopted factor-presence nexus for income tax and has a \$500,000 sales volume threshold. So a seller making sales of \$10,000 sales volume to Colorado

would have use tax nexus but possibly not income tax nexus. Phil believes that the \$10,000 sales volume threshold is needed.

Jayne Kulberg, Wisconsin, commented that Wisconsin is not concerned with a sales volume threshold but would require a look-back period commencing in 2015, because that is when Amazon built facilities in Wisconsin.

Matt Peyerl, North Dakota, asked if sellers could pick and choose which states to apply to. Richard Cram responded that yes, that is how the current program works.

Phil Horwitz stated that in Colorado's view, Amazon could provide attributional nexus to its marketplace sellers not only through presence of the seller's inventory in an Amazon warehouse, but also through other fulfillment-type activities conducted in the state on behalf of the marketplace seller.

Richard Dobson, Kentucky, noted that the 60-day application period is a narrow window, so a sales volume threshold should not be needed. Richard also believed that in turn for relief from look-back period liability, sellers should be required to register in all participating states. Sellers should not get to pick and choose States to apply to.

Chair Lennie Collins noted that the Committee should be cautious about dictating qualifications.

Lee Baerlocher expressed concern about including income tax in the proposal.

Ken Roberts, Idaho, stated that the goal should be to get good participation of the states, so states should be allowed to decide whether to include income tax in the proposal. He stated that states should be allowed to select a sales threshold if they want, so states decide whether to participate and which taxes to provide voluntary disclosure relief for.

Katie Lolley, Oregon, stated that Oregon has no sales tax, may consider participating for income tax, but would not waive back tax liability.

Pat Calore, Michigan, stated that Amazon is building a facility in Michigan, so Amazon FBA sellers would not have any sales/use tax liability currently for nexus from having inventory in an Amazon facility. Legislatively, Michigan cannot waive look-back period liability but could provide some liability relief beyond the legislatively authorized look-back period.

Richard Dobson, Kentucky, suggested that the proposal move forward only for sales/use tax.

Phil Horwitz stated that the proposal should be limited to those marketplace sellers who have nexus as a result inventory in a marketplace fulfillment center or from other nexus-creating activities by the marketplace platform in the taxing state, and the seller should represent that in the agreement.

Scott Peterson of Avalara offered public comment suggesting that the proposal be kept as simple as possible. He noted that the August 17—October 17 application period will be a challenge to get the word out to sellers. He suggested that States put themselves into “buckets” that will be easy to explain to sellers (States willing to provide look-back period relief, different income tax nexus thresholds, etc.).

Marshall Stranburg, Deputy Executive Director, MTC, emphasized keeping the proposal as simple as possible, and attractive to sellers—a unique opportunity. He pointed out that the sellers using multiple platforms, once they register, will be required to report all sales to the State, regardless of what platform is used.

Audrey Tyndall-Hoyle, New Jersey, indicated that New Jersey is willing to participate with prospective compliance and back tax liability waiver, with a \$10,000 minimum sales volume threshold. She suggested that sellers should decide which taxes to seek voluntary disclosure relief from. She was in favor of the August 17-October 17 application time period.

Phil Horwitz, Colorado, moved that the Committee should proceed forward with the proposal as outlined in the report on the closed session meetings, with the requirement that the seller represent in the agreement that it has nexus through a marketplace provider/facilitator and:

1. Alternative 2 version of Paragraph 8 in the agreement be used;
2. Applicant must commence reporting and remitted sales/use tax by December 1, 2017;
3. Participating States will determine;
 - a. if they will offer total back tax liability waiver; or
 - b. limited look-back period;
 - c. if both sales/use tax income/franchise tax are included, or only sales/use tax; and
 - d. whether there will be a sales volume or back-tax liability threshold.

Sixteen states voted in favor of the motion and none opposed. The motion passed.

Jayne Kulberg, Wisconsin, requested that Richard Cram prepare and send out a matrix, showing which “bucket” each participating state fits into.

Chair Lennie Collins directed Richard Cram to first send out an email to Nexus Committee requesting that each state identify which “bucket” it fits into. Richard Cram will then build a matrix of that information and send it out to the states. Richard Cram will prepare the information to post on the MTC website explaining the proposal.

Richard Cram advised that Indiana and Pennsylvania expressed interest in participating in the proposal. Richard Cram indicated that if Indiana and Pennsylvania were required to make a payment of \$6400 each to participate, this would represent the average amount of dues for participating States prorated for a 3-month period.

Randy Tilley expressed concerns about the MTC staff’s ability to handle the additional volume of applications for Indiana and Pennsylvania. Steven Alvarez, Georgia, echoed those concerns.

Richard Cram stated that it was unknown how many applications would be received, but MTC staff would do their best to timely handle all applications.

After further discussion, Randy Tilley, Idaho, moved that a non-Nexus Program state be allowed to participate upon payment of at least \$6400 and as a one-time offer. The motion failed on a vote of 5 states in favor, and 10 states opposed.

NOL Issue

Richard Cram reminded the Committee that at the March 9 meeting, the Committee had approved a motion to add a provision to the standard agreement providing that NOLs are not to be allowed if they accrued prior to the lookback period. Richard Cram presented draft language to that effect to the Committee. Richard Cram also presented a memorandum suggesting that instead, a “frequently asked question” could be added to the materials on the MTC website addressing this issue, rather than amending the standard agreement (which could cause confusion).

Audrey Tyndall-Hoyle, New Jersey, suggested that the list of “frequently asked questions” be amended to address treatment of not only NOLs in a voluntary disclosure agreement, but also other tax attributes, such as tax credits, carry-forwards, carry-backs, and capital gains. Audrey moved that, rather than amending the standard agreement, the list of “frequently asked questions” be amended as she suggested. The motion was approved by unanimous voice vote.

New Business

No new business was brought before the Committee.

Richard Cram presented to Lennie Collins a plaque commemorating Lennie’s outstanding service as Chair of the Committee since March 2008. Christy Vandevender, Vice-Chair, will be the new Chair after the conclusion of this meeting.

Closed Session

The committee entered closed session to discuss matters protected from disclosure.

Open Session

The Committee returned to open session, had nothing to report, and adjourned.